

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 15, 2006

Division: County Attorney

Bulk Item: Yes ☐ No ☒

Department: County Attorney

AGENDA ITEM WORDING:

Approval of contract with Interim County Attorney through January 14, 2007.

ITEM BACKGROUND:

At the 2/15/06 meeting, the BOCC cancelled the contract with the County Attorney and appointed an Interim County Attorney to complete his contract. This agreement sets forth the terms of employment of the Interim County Attorney.

PREVIOUS RELEVANT BOCC ACTION:

See Item Background.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: \$137,888 per year

BUDGETED: Yes ☒ No ☐

COST TO COUNTY: \$137,888

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☒

AMOUNT PER MONTH _____ **Year** _____

APPROVED BY: County Atty ☒ OMB/Purchasing ☒ Risk Management ☒

DIVISION DIRECTOR APPROVAL: _____


SUZANNE A. HUTTON, INTERIM COUNTY ATTORNEY

DOCUMENTATION: Included ☒ To Follow _____ Not Required _____

DISPOSITION: _____

AGENDA ITEM # _____



BOARD OF COUNTY COMMISSIONERS

Mayor Charles "Sonny" McCoy, District 3
Mayor Pro Tem Murray E. Nelson, District 5
George Neugent, District 2
David P. Rice, District 4
Dixie M. Spehar, District 1

*Suzanne A. Hutton, Interim County Attorney***
Natleene W. Cassel, Assistant County Attorney
Susan M. Grimsley, Assistant County Attorney
Pedro J. Mercado, Assistant County Attorney
Jerry D. Sanders, Assistant County Attorney
*Robert B. Shillinger, Assistant County Attorney ***



Office of the County Attorney
502 Whitehead Street, 3rd Floor (Rear)
P. O. Box 1026
Key West, FL 33041-1026
Fax (305) 292-3516

*** Board Certified in City, County & Local Govt. Law*

MEMORANDUM

TO: Mayor Charles "Sonny" McCoy
Mayor Pro Tem Murray E. Nelson
Commissioner George Neugent
Commissioner David P. Rice
Commissioner Dixie M. Spehar

FROM: Suzanne A. Hutton, Interim County Attorney

RE: Contract proffered at 3/15/06 meeting

DATE: February 27, 2006

I have interpreted the 2/15/06 action of the County Commission to appoint me as Interim County Attorney effective February 16, 2006, to complete the terms of the contract previously entered with John R. Collins. In order to clarify the terms and conditions which you expect me to fulfill, I have modified Mr. Collins' contract to provide for me to act as the interim County Attorney through January 14, 2007. In revising the contract to reflect the changed circumstances of employment, I have made a number of changes from the preceding contract. A copy of the preceding contract and a statement of support from the County Attorney's staff are included in the agenda packet after this memo as background information.

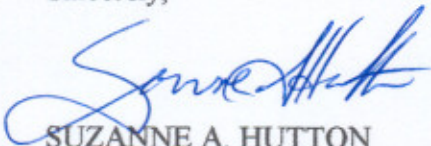
In order to facilitate your reading of the new contract, the major changes are as follows:

1. The paragraphs on Employment and full time employment have been merged.
2. In section 5 on Term of Agreement, the sub-paragraph for extension of the contract has been deleted.
3. A new sub-paragraph D has been added to that section, captioned Resumption of Position. This provision would allow me to step back into the position which I held through February 15, 2006, if the Commission determines to cancel this agreement without cause or to appoint someone else as County Attorney at, or prior to, the end of this agreement.

4. A new section 7 has been inserted to clarify that I continue to be paid the \$250 per month as set forth by ordinance to recognize my certification in City, County, and Local Government Law. While this should be paid pursuant to the ordinance even if not specified in the contract, I wanted this component of pay, and the underlying reason, to be apparent on the face of the contract.
5. The segment in section 10 regarding payment by the County to upgrade prior service in the retirement system has been deleted.
6. Except for Florida Bar dues, the required professional memberships have been changed to be permissible but not mandatory.
7. The portion of Section 14 about retaining a private law office has been deleted.
8. The annual leave and sick leave section 15 has been revised to reflect the accrual of leave within the County system in lieu of transferring leave accrued through another governmental entity.

I look forward to continuing to work with you in this new role and appreciate your confidence in appointing me as Interim County Attorney.

Sincerely,



SUZANNE A. HUTTON
Interim County Attorney

SAH:kmp

cc: Thomas J. Willi, County Administrator

INTERIM EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into the 15th day of March, 2006, by and between the Board of County Commissioners of Monroe County ("Board"), Florida, a political subdivision of the State of Florida, whose address is 500 Whitehead Street, Key West, Florida 33040, and Suzanne A. Hutton, an attorney licensed to practice law in the State of Florida, ("Attorney"), whose residential address is 551 Pine Lane, Big Pine Key, Florida 33043.

WHEREAS, the position of County Attorney has become vacant by action of the Board on February 15, 2006; and

WHEREAS, Section 2-356(e), Monroe County Code, provides for the appointment of an interim County Attorney upon vacation of the position; and

WHEREAS, the Board has determined that it is in the best interests of Monroe County to appoint Attorney as Interim County Attorney through January 14, 2007; and

WHEREAS, the parties have determined that the terms and conditions of this Agreement are to the equitable benefit of both parties;

NOW THEREFORE, the Board and Attorney hereby agree as follows:

- 1. Employment.** Attorney is hereby employed by Board as Interim County Attorney, which position shall be a full-time position. Work hours performed, annual leave, personal leave, and sick leave hours taken will be documented on a form or forms to be provided by Board. Board agrees that any period of probationary service that may be applicable to the position of Interim County Attorney under the provisions of the county's Personnel Policies and Procedures Manual is hereby waived.
- 2. Sole Client.** Attorney agrees that she will not provide legal services, whether for a fee or pro bono, for any other person or entity without the express written approval of the Board. It is the intent of this section that Attorney will have no other private or public clients.
- 3. Post-Employment Restrictions.** Attorney agrees that, for a period of twenty-four (24) calendar months from the effective date of termination or cancellation of this Agreement, Attorney shall conform to the requirements of Chapter 2, Article XXI, Monroe County Code, governing lobbying and procurement ethics for former officers and employees.
- 4. Disclosure of Financial Interests.** Section 112.3145, Florida Statutes, requires financial disclosure by a "local officer," and subsection (l)(a) defines local officer to include "any person holding one or more of the following positions: ...county or municipal attorney." Attorney agrees to make such disclosures on such forms and at such times as may be required by state law.
- 5. Term of Agreement; Termination; Cancellation.**
 - A. Normal Term.** The normal term of this Agreement will be for a period of eleven (11) calendar months, commencing at 8:30 A.M. on the 16th day of February, 2006, and ending at 5:00 P.M. on the 14th day of January, 2007.

B. Termination of Agreement.

- 1. By Board for Cause.** This Agreement may be terminated by Board only for cause, and only by majority vote of the Board of County Commissioners at a public meeting duly noticed and held. At least fifteen (15) days prior to the date on which the agenda for the Board of County Commissioners is prepared that contains the item of termination to be acted upon, Board will provide to Attorney a detailed written statement of the reason or reasons for which termination is being sought. The statement will include, but not be limited to, the act or acts, omission or omissions, or default or defaults which form the basis for which termination is sought, along with the relevant date or dates, time or times, and location or locations.
 - 2. By Attorney for Breach.** This Agreement may be terminated by Attorney upon a breach of this Agreement by Board, provided the Board has not cured the breach within thirty (30) days following receipt of the notice of the breach. If the breach has not been cured, termination will be effective on the thirty-first day following receipt of written notice from Attorney by the Board.
 - 3. By Normal Expiration.** This Agreement is terminated upon its normal expiration date as stated in Section 5.A.
 - 4. Definition.** As used in paragraph B. 1 above, "for cause" shall mean (a) dishonesty with respect to the business and operation of the Board; (b) confirmed violation of the Board's drug policy; (c) refusal to cooperate in an investigation regarding any aspect of the business or operation of the Board, which investigation is conducted by or at the express direction of the Board; (d) conviction of a crime which is classified as a felony or a crime involving moral turpitude; or (e) gross neglect or willful or intentional misconduct.
- C. Cancellation.** Board may cancel this Agreement without cause, effective thirty (30) days after giving written notice to Attorney. Such cancellation will be by majority vote of the Board at a duly noticed public meeting.
- D. Resumption of Position.** Upon a vote of the Board to cancel this Agreement or in the event Attorney is not appointed as County Attorney, or if appointed does not accept said appointment to fill the position of County Attorney, Attorney shall have the option to remain within the Office of the County Attorney, resuming the Assistant County Attorney position designated Senior Legal Advisor, to be paid at an annual salary which shall be computed by adjusting the Attorney's annual salary as of the day immediately preceding the effective date of this agreement for all merit and cost-of-living raises which Attorney would have received during the time of this contract had Attorney remained in her position as an Assistant County Attorney. This provision shall survive the normal expiration date or earlier termination of this agreement.

6. Base Salary.

- A. Amount.** The Board will pay to Attorney, as and for a base salary, the sum of ONE HUNDRED TWENTY-EIGHT THOUSAND EIGHT HUNDRED THIRTY-EIGHT DOLLARS (\$128,838.00) per annum for the term of this agreement. For purposes of this Agreement, "per annum" will be defined as the fiscal year which commences on October 1st and ends on September 31st.

B. Payment. Base salary payments will be paid in equal biweekly installments (26 pay periods per annum).

7. City, County, and Local Government Law Certification. Attorney is certified by the Florida Bar as a specialist in City, County, and Local Government Law. Pursuant to Sec. 2-360(c), Monroe County Code, Attorney shall be paid \$250.00 per month.

8. Transportation Allowance. Attorney agrees that she will be responsible for providing her own motor vehicle for transportation within the limits of Monroe County that may be necessary, required, or appropriate in fulfilling her responsibilities and duties under this Agreement. In lieu of the preparation, maintenance, submission, review, approval, and auditing of detail travel expense reimbursements, and as partial consideration for Attorney's entering into this Agreement, Board agrees to pay to Attorney the sum of FIVE HUNDRED AND FIFTY DOLLARS (\$550.00) per month as and for a transportation allowance. For travel out of Monroe County by motor vehicle, Attorney will be reimbursed by Board on a per trip basis at the rate allowed for under Chapter 112, Florida Statutes, with mileage calculated as if departure commenced at the Monroe County-Dade County line and return ended at the Monroe County-Dade County line. At its sole discretion, and upon request by Attorney, Board may authorize the reimbursement of Attorney's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

9. Travel Reimbursement. Board agrees to pay to or reimburse Attorney for the costs of meals, other expenses and lodging incurred by Attorney that may be necessary, required, or appropriate in fulfilling Attorneys duties and responsibilities under this Agreement. Meals, other expenses and lodging will be paid for or reimbursed at the rates specified in Section 112.061, Florida Statutes. At its sole discretion, and upon request by Attorney, Board may authorize the reimbursement of Attorney's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

10. Florida Retirement System. Board agrees that the position of Interim County Attorney will be a position classified as, and eligible for the benefits provided under, the Senior Management Service Class, in accordance with Section 112.055, Florida Statutes. Board will contribute such amounts at such times as is required by Section 112.055, Florida Statutes, and any other applicable law or statute.

11. Duties and Responsibilities.

A. General. Attorney will have those responsibilities and perform those duties which are listed in the attached Position Description (Attachment A) and which are contained in this Agreement. If a duty or responsibility contained in the Position Description is in conflict with a duty or responsibility contained in this Agreement, the duty or responsibility in this Agreement will prevail.

B. Exemptions. Nothing in this Agreement or in the Board's policies, rules, and procedures shall limit Attorney's right to make passive financial investments; to participate in charitable service or work with charitable organizations and other community activities, including trade and professional organizations; or to undertake other activities which do not interfere with the performance of Attorney's duties under this Agreement, it being mutually agreed that Attorney's participation in such activities is of benefit to the Board.

C. Availability. Attorney will be reasonably available to Board members and key Board staff twenty-four (24) hours per day. Such availability will be by telephone or electronic messaging, or in person. Board shall maintain and pay for Attorney cellular telephone service.

D. Ethical Considerations. Board and Attorney agree that, in general, it is the Board as a whole that is the client entity of the Attorney. However, as recognized by the Rules of Professional Conduct of The Florida Bar, the attorney-client relationship for organizational and governmental agencies is not the same as the attorney-client relationship for private individuals, and Attorney's professional relationship with the Board will be consistent with the requirements of Rule 4-1.13 of the Rules of Professional Conduct.

E. Legal Opinions. Board and Attorney agree that from time to time Attorney will be requested to render a legal opinion on matters of significance to the Board, the County Administrator, or the County Clerk. Board and Attorney agree that, consistent with the ethical obligations of the Attorney to the Board, (1) all requests for an opinion will be in writing; (2) all requests will be communicated to Attorney directly by or through a County Commissioner, the County Administrator, or the County Clerk; and (3) all opinions rendered will be in writing, addressed to the Board of County Commissioners, and will be over the signature of the Attorney. It is expressly agreed that the Attorney will not entertain requests for, nor will render a written opinion to, individuals or entities who are members of the general public or special interest groups, or who are representatives of governmental agencies unless specifically directed to do so by a majority vote of the Board in a duly noticed public meeting.

12. Professional Memberships. Attorney will maintain her membership in good standing with The Florida Bar and the City, County & Government Law Section of The Florida Bar, and may become a member of, and maintain membership status in divisions or sections of The Florida Bar which are pertinent to the issues addressed by the County Attorney's office. Additionally, Attorney may become a member of the American Bar Association and a member of the pertinent sections or divisions. All dues, occupational licenses, fees, and costs for obtaining and maintaining the memberships delineated above will be paid for by Board.

13. Local Liaisons. Attorney will maintain liaisons with the legal representatives of local governmental and public agencies located within the geographical limits of Monroe County, to include but not be limited to Islamorada, Village of Islands; City of Layton; City of Key Colony Beach; City of Marathon; City of Key West; Florida Keys Mosquito Control District; Florida Keys Aqueduct Authority; Monroe County Housing Authority; and the School Board of Monroe County.

14. Office Space, Staff and Supporting Services.

A. Office Space. Board will provide office space for Attorney.

B. Staff. Board will provide sufficient qualified staff to the office of County Attorney to assist Attorney in efficiently, productively, and professionally meeting the mission, goals, and objectives of the County Attorney's office and the duties of the Attorney. Staff will include, but not be limited to, attorneys licensed to practice law in the State of Florida, paralegals and/or legal assistants, and administrative support.

hardware and software, electronic research and e-mail services, world wide web and internet access, books and subscriptions, periodicals, office supplies, photocopy equipment, county web-page presence and server access and storage space, postage, office equipment and furniture, and other similar materials, equipment and services as may be necessary for the proper, productive, and efficient operation of the office of County Attorney.

15. Annual Leave and Sick Leave. Attorney shall retain all personal and sick leave benefits accrued through February 17, 2006, under the prior employment of Attorney as an assistant county attorney. Beginning as of February 20, 2006, Attorney will earn and be credited with sick leave hours and annual leave hours at a rate per month equal to the highest rate earned by any other employee or officer of Board. Attorney may accumulate unused annual leave without limit and no unused annual leave may be forfeited due to nonuse, any provisions of the Personnel Policies and Procedures Manual to the contrary notwithstanding. This provision shall survive the expiration or earlier termination of this Agreement.

16. Personal Leave. Due to the nature of Attorney's duties and the requirements of the position of County Attorney, interference with Attorney's private life is to be expected and it is recognized that Attorney may from time to time absent herself during normal business hours for personal reasons; however, Attorney shall remain reasonably available to Board members and key Board staff by telephone or other electronic means. Such personal time will not be considered or debited against vacation time.

17. Participation in Educational and Board-Related Events. Board agrees to budget for and to pay the costs incurred by Attorney in attending seminars, continuing legal education courses, Board-related events and out-of-county meetings as may be necessary or appropriate to Attorney's duties and responsibilities under this Agreement.

18. Indemnification and Cooperation.

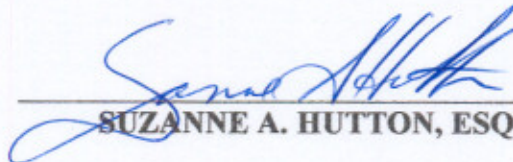
A. Indemnification. The Board will defend, hold harmless, and indemnify Attorney against any tort, professional liability, or other legal demand, claim, or action which is related directly or indirectly to Attorney's actions in her capacity as County Attorney.

B. Cooperation. In the event of actual or threatened litigation and/or administrative proceedings involving the Board which arises out of an action or actions which occurred or are alleged to have occurred while Attorney was acting in her capacity as County Attorney, Attorney will cooperate with the Board and its counsel in defending and resolving the litigation or proceeding. In such regard, Board agrees to pay Attorney's reasonable travel and subsistence expenses incurred in cooperating with the Board and its counsel, including preparation for and actual discovery, settlement, and trial and hearing of such matters.

1. Attorney agrees that, unless required by law, she will not cooperate with or assist any party, person, or entity who has, had, or may have, or asserts that he, she, or it has or may have any claim of any nature against the Board, its agents, officers, or employees, unless the Board or its authorized agent expressly consents in writing to waive this provision of this Agreement.

2. Attorney shall not disclose to any person, party, or entity any confidential, proprietary, time-sensitive, or non-public information relating to the Board or its operations unless required by law to do so.
3. The restrictions and prohibitions set forth in paragraphs 18.B.1 and 18.B.2 will not be applicable in instances where one or more governmental entities with jurisdiction over a claim or a violation of law, are involved.

19. Governing Law; Attorney's Fees and Costs; Venue. This agreement is made in the State of Florida and shall be governed by Florida law. This is the entire agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought. This agreement may be signed in more than one counterpart, in which case each counterpart will constitute an original of this agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. The prevailing party in any litigation, arbitration or mediation relating to this agreement shall be entitled to recover its reasonable attorneys' fees from the other party for all matters, including, but not limited to, appeals. Monroe County, Florida, shall be the proper venue for any litigation involving this agreement. This Agreement is not subject to arbitration.

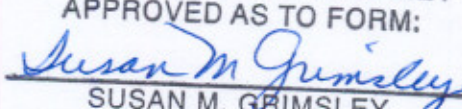

SUZANNE A. HUTTON, ESQ.

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor Charles "Sonny" McCoy

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY